



POLICE DEPARTMENT

September 10, 2008

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jill Rosenthal  
Tax Registry 931100  
26 Precinct  
Disciplinary Case Nos. 82985/07 & 83504/07  
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The above-named member of the Department appeared before me on May 20, 2008, charged with the following:

Disciplinary Case No. 82985/07

1. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about September 13, 2006, was off-post without authority, permission or necessity, for approximately forty-three (43) minutes, in that Officer Rosenthal finished her scheduled physical therapy session at 1445 hours and went home for the duration of her tour which ended at 1528 hours.

PG 203-05 – PAGE 1 – PARA 2 PERFORMANCE ON DUTY

2. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about September 22, 2006, was off-post without authority, permission or necessity, for approximately two (2) hours and thirteen (13) minutes in that Officer Rosenthal finished her scheduled appointment at her Department Surgeon at 1315 hours and did not arrive at physical therapy until 1528 hours.

PG 203-05 – PAGE 1 – PARA 2 PERFORMANCE ON DUTY

3. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about September 22, 2006, made false entries in Department records in that Officer Rosenthal indicated in the clinic log that she left at 1345 hours when, in fact, Officer Rosenthal was observed leaving the clinic at 1315 hours.

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PG 203-05 – PAGE 1 – PARA 4      PERFORMANCE ON DUTY

4. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about September 27, 2006, was off-post without authority, permission or necessity, for approximately two (2) hours and eleven (11) minutes in that Officer Rosenthal was observed from 1209 hours to 1420 hours inside of her residence and/or inside of her vehicle prior to going to physical therapy.

PG 203-05 – PAGE 1 – PARA 2      PERFORMANCE ON DUTY

5. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about October 13, 2006, was off-post without authority, permission or necessity, for approximately two (2) hours and five (5) minutes in that Officer Rosenthal was not present at physical therapy until 1340 hours, after being post-changed to physical therapy at 1105 hours.

PG 203-05 – PAGE 1 – PARA 2      PERFORMANCE ON DUTY

6. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about November 9, 2006, was off-post without authority, permission or necessity, from 0705 hours to 0805 hours, 1040 hours to 1200 hours, and from 1200 hours to 1345 hours, for a total of four (4) hours and five (5) minutes, in that Officer Rosenthal's tour started at 0705 hours and she did not cross the bridge from her resident county into Queens county where her Department doctor was located until 0805 hours; Officer Rosenthal signed out of her Department doctors office at 1040 hours only to return to the doctors office at 1150 hours and change her departure time to 1200 hours; and, after signing out again at 1200 hours, Officer Rosenthal did not return to her command until 1345 hours.

PG 203-05 – PAGE 1 – PARA 2      PERFORMANCE ON DUTY

7. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, on or about November 9, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that Officer Rosenthal made false or misleading statements to Sergeant Fuoco, 26th Precinct Desk Officer, to wit; Officer Rosenthal spoke with Sergeant Fuoco at approximately 1240 hours and requested lost-time stating that her doctor arrived late and her appointment did not end until 1230 hours, when, in fact, said representations were false.

PG 203-10 – PAGE 1 – PARA 5      PROHIBITED CONDUCT

Disciplinary Case No. 83504/07

1. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, while on-duty, on or about October 3, 2007, failed to proceed to her post, sector or assignment as directed by a supervisor and was off-post without authority, permission or necessity, for

approximately 1 hour and 10 minutes, in that Officer Rosenthal, after being post changed to the Police Academy in New York County, was observed in the vicinity of the 59th Street Bridge in Queens County.

PG 202-21 – PAGE 1 – PARA 2      POLICE OFFICER  
PG 203-05 – PAGE 1 – PARA 2      PERFORMANCE ON DUTY

2. Said Police Officer Jill Rosenthal, assigned to the 26th Precinct, on or about October 4, 2007, without authority or permission, changed her post and assignment in that she started her tour at the Medical Division instead of reporting to the 26th Precinct as required.

PG 202-21 – PAGE 1 – PARA 2      POLICE OFFICER

The Department was represented by Dan Maurer, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to Specifications Nos. 1 and 2 in Disciplinary Case No. 83504/07. The Respondent, through her counsel, pleaded Guilty to Specifications Nos. 1-7 in Disciplinary Case No. 82985/07 and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent having pleaded Guilty is found Guilty as charged in Disciplinary Case No. 82985/07. The Respondent is found Guilty in Disciplinary Case No. 83504/07.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Lieutenant Michael Keenan, Sergeant Lourdes Morales, and Lieutenant Dominick Valenti as witnesses.

Lieutenant Michael Keenan

Keenan is a 14-year member of the Department who holds the position of Integrity Control Officer at the 26 Precinct. He has served in this capacity since March 2007.

Keenan testified that on October 2, 2007 the Respondent was scheduled to perform a "second platoon" tour of duty. Using his notes, Keenan stated that on that date the Respondent was scheduled to go to the Police Academy and One Police Plaza. She started the tour as the telephone switchboard ("TS") operator within the 26 Precinct.

At 8:30 a.m., the Respondent was taken off the TS operator position to allow her to report to the Police Academy and One Police Plaza. Keenan could not recall what the purpose of her visit was. At 8:50 a.m. a Command Log entry was made changing the Respondent's post to the Police Academy. Keenan said that the Respondent "[e]ventually" made it to her destinations.

On October 4, 2007, the Respondent was scheduled to work a day tour beginning at 7:00 a.m. According to the roll call she was assigned to the Medical Division in Lefrak City, Queens ("Lefrak"). Keenan testified that the Respondent never reported to the 26 Precinct on that day. He received a call from Lieutenant Valenti of the Medical Division, who inquired why the Respondent was at Lefrak. Valenti told Keenan that the Respondent did not have an appointment or any reason to be there.

After talking with Valenti, Keenan initiated an investigation. He learned that the Respondent went to Roll Call<sup>1</sup> the previous day to state that she was going to Lefrak on October 4. Keenan later testified that she made this change of assignment on her own

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<sup>1</sup> Capital letters are used when referring to the physical office of the Roll Call or anyone assigned to it. Lower case letters are used when referring to the sheet of paper used as the daily roll call.

initiative. She was never notified by anyone to go there nor was any appointment made for her. In addition, the Respondent started her tour at Lefrak without permission from her supervisors. Keenan noted that no one from the Medical Division called the 26 Precinct in order to have the Respondent report there on October 4, and the Respondent should have reported to the 26 Precinct on that day, because she did not have permission from a supervisor to report to Lefrak.

On cross-examination, Keenan affirmed that on October 3 the Respondent's post changed to the Police Academy. He also reiterated that she left her assignment at the TS at 8:30 a.m. and informed the desk at 8:50 a.m. that she was leaving for the Police Academy. Keenan denied that there was a certain amount of time given to an officer when they leave the precinct to travel to another destination, stating, "Generally, the only travel time comes with respect to overtime issues when you're dismissed from a detail. I believe it is a reasonable amount of time."

Keenan could not recall if the Respondent was on full duty on October 3, although he believed she was either limited or restricted. He admitted he later found out that the reason she was going to the Police Academy was to pick up her firearms so she could be restored to full duty. Keenan agreed the Respondent returned to full duty a few days after October 3, but did not know the exact date.

Keenan acknowledged he learned that the Respondent arrived at the Police Academy at approximately 10:00 a.m. and that to his knowledge she took care of her business there. He denied seeing her again at the 26 Precinct on October 3. When asked if she was required to return to the precinct, Keenan stated that during the course of his investigation he learned the Respondent had requested lost time at 3:00 p.m. Her

assigned tour was scheduled to end at 3:35 p.m. He explained that "lost time" referred to leaving early from work. Keenan affirmed that the "lost time" was deducted from the Respondent's accrued time and that she was "giving back" 35 minutes to the Department.

When asked if requesting lost time via telephone was improper under those circumstances, Keenan responded that he believed officers should generally report back to the precinct to take lost time. He stated that he personally asks officers to return to the command if they request lost time over the telephone, but he could not speak for other supervisors. Keenan admitted that it was possible another supervisor could have granted the Respondent lost time over the telephone. He did not know if such actions were common practice, and added, "I guess just from certain situations it happens." Keenan also could not say how often lost time was requested and granted over the telephone, but stated, "[T]hat is what happened in this case."

Keenan affirmed that the Respondent was initially assigned to report to the Medical Division at the start of her tour on October 4. He agreed his investigation revealed that she had not been given the authority to report there by a supervisor, explaining that he spoke to Sergeant Young, the desk officer in the 26 Precinct. Keenan believed Young did not speak to the Respondent directly, but spoke with her through an unknown intermediary.

Keenan stated that the Respondent did not speak to anybody about changing her tour to start at the Medical Division, adding that she did not get permission from Young. He explained that he spoke to Officer Rodriguez from Roll Call, who informed him that the Respondent came in on October 3 and stated that she was assigned to go to Lefrak

Keenan agreed that the Respondent signed out at 8:50 a.m. on October 3 to go to the Police Academy and that she took lost time at 3:00 p.m. over the telephone. Keenan could not recall when he was working that day. He was not sure how the Respondent contacted Roll Call on October 3 to inform them her tour had been changed. He denied seeing the Respondent between 8:50 a.m. and 3:00 p.m. within the 26 Precinct. He also denied interviewing Rodriguez as part of his investigation, agreeing that he only spoke to her informally.

Keenan agreed that Rodriguez said she had spoken to the Respondent, but denied the Respondent told her she would be changing her start from the 26 Precinct to Lefrak. He clarified that the Respondent only told Rodriguez that she needed to go to Lefrak the next day and did not mention she would be starting her tour there. He stated, "The issue with the roll call is that she said she had to go to Lefrak City on the 4<sup>th</sup> and she did not go to Lefrak City on the 4<sup>th</sup>."

Keenan affirmed that the roll call was prepared a day in advance, and stated that the October 4 roll call indicated that the Respondent would be going to Lefrak. He clarified that it was not under roll call adjustments but rather under "exceptions," in the back pages of the roll call (See Respondent's Exhibit [RX] A).

Using the exceptions page, Keenan stated that it listed the Respondent's name followed by "0700, One Lefrak City." He believed the roll call was prepared by Rodriguez, but stated that to his knowledge the roll call had not been checked by a supervisor. Keenan added checking the roll call was not his responsibility, and conceded, "It is quite possible that it is checked, I believe it is." He clarified that it would be the administrative lieutenant's responsibility to check the roll call. Keenan also admitted that

the change to the Respondent's location was approved, but added that the Respondent went to Roll Call and explained she needed to be changed to Lefrak City, and Roll Call trusted her enough to accept the change.

Keenan disputed the fact that he had earlier implied nobody verifies the roll call, but explained that "it was an act of good faith" by Roll Call to change the Respondent's assignment; they believed she had been justly assigned there. He added that only Valenti's call initiated the investigation.

Keenan was unaware that the Respondent spoke to her supervisors regarding her need to report to Lefrak to pick up paperwork, but when Keenan was asked specifically about the Respondent informing Captain Flood and Young he admitted an Officer Dome had informed him the Respondent had done so. Keenan did not know how much Young knew of the Respondent's situation, he only knew that Young did not authorize the Respondent to start at Lefrak. He did not ask Young anything about the Respondent's motivations or reasons why she needed to report there.

Keenan agreed he interviewed Young on October 11, 2007 and also agreed he recorded the interview. Keenan affirmed he informed Young that she must answer the questions truthfully and forthrightly. The following was read from Keenan's interview with Young:

**Question (Keenan):** Okay, is there any reason why she would say that you gave her permission to go out there?

**Answer (Young):** We had a conversation about her passing a range at the Police Academy and she said during the conversation that she had informed me that she was going to [Lefrak]. So I told her that I was unaware of that conversation because I thought that she was going to the range the next day at the Academy.



Keenan acknowledged that he remembered that question and answer, and explained that he believed after the investigation began the Respondent told Young about a conversation where the Respondent claimed she had mentioned going to Lefrak. He stated that Young told the Respondent she did not remember such a conversation. Keenan clarified that he believed Young was denying giving authorization to the Respondent to report to Lefrak City.

On re-direct examination, the Respondent testified that it was possible the Respondent could have gone to Roll Call physically on October 3 prior to being taken off the TS to place herself at Lefrak the next day.

During further cross-examination, Keenan was asked how the Respondent would know she needed to go to Lefrak the next day to return to full duty if she had not yet been told she needed to pick up a form there. Keenan responded, "Well, according to Valenti when he initially called me, not only was she going to [Lefrak] to try to obtain her firearms, but we discovered [the Respondent] also went down to the Disability Board, which has nothing to do with her getting her firearms back." Keenan did not know if the Disability Board was on the 17th floor, the same as the Medical Division, nor did he know if their offices were 40 feet from each other.

On questioning by the Court, Keenan testified that he has been a member of the service for 14 years, and explained that the 26 Precinct was located on 126 Street between Broadway and Amsterdam. He clarified the precinct was closer to the Westside Highway than the FDR Drive.

Sergeant Lourdes Morales

Morales is a 15-year member of the Department assigned to the Special Operations Section of the Housing Bureau. On October 3, 2007 she worked a 6:42 a.m. by 3:39 p.m. tour. On that day she was assigned to ensure that cooking stoves were delivered safely and without incident to a housing development. Morales specified that she was on a "fixed post," which meant that she was not to leave the development on a "dry run." Morales was the only supervisor for that unit on October 3, and she had two officers working with her, Officer Ruben Leon and Officer Andres Rodriguez ("Andres"). Morales explained that being on a "fixed post" meant that they were to stay in their car and accompany the stoves. Morales never entered a building; she only waited outside watching the stoves and the truck.

Morales explained that she knew the Respondent because she was dating Leon. The fact that Morales worked with Leon every day allowed her to learn details of his personal life. Prior to October 3, 2007, Morales had worked with Leon for approximately two years, since May 2005.

Morales testified that she observed the Respondent on October 3, 2007. She was in her private vehicle parked on the side of the road speaking to Leon. Leon was half a block away from their vehicle standing outside on a corner speaking with the Respondent, approximately five car lengths from Morales. Morales observed Leon speaking with the Respondent for approximately ten minutes. She did not ask the Respondent why she was there, but inquired about her presence to Leon. Morales testified that at one point she learned the Respondent "was not supposed to be there."

Using a copy of a command discipline given to Leon, Morales clarified that his post was on the corner of 21 Street and Queens Plaza North. This location is “exactly on the corner of the entrance” to the 59 Street Bridge on the Queens side. Morales never interrupted the conversation between Leon and the Respondent to instruct the Respondent to be on her way.

On cross-examination, Morales stated that she had met the Respondent once or twice before. She did not remember greeting or acknowledging the Respondent on October 3, but might have “shook [her] head” to her in greeting.

On questioning by the Court, Morales testified that she has been with the Department for almost 16 years. She was assigned to the Housing Bureau Special Operations Section on October 3, 2007.

Lieutenant Dominick Valenti

Valenti is a 23-year member of the Department who is assigned to the Medical Division. He is the Commanding Officer in the Absence Control and Investigations Unit. He has held that position for more than seven years.

On October 4, 2007, Valenti observed the Respondent at the Medical Division, located at 59-17 Junction Boulevard in Queens County. He added the location was commonly known as One Lefrak. He saw the Respondent on the 15 floor, which houses the Psychological Services Section and the Article Two Disabilities Unit. Also on that floor is a medical records and billing office. Absence Control is located on the 16 floor of the building.

Valenti observed the Respondent exiting the Article Two Disabilities Unit and he questioned Officer Cervantes of the unit about why the Respondent was present.

Cervantes informed him that the Respondent had been inquiring how fast she could get her disability case sent back to medical. During the course of his investigation of the Respondent, Valenti also went to the Orthopedic Clinic to learn if the Respondent had signed in. When he could not find her signed in after checking the Department logs, he called Keenan at the 26 Precinct.

Keenan informed Valenti that the Respondent was listed as present at Lefrak during the start of her tour on October 4, but Valenti was unable to find any notification directing the Respondent there. Based upon his investigation, no supervisors from the Medical Division contacted the 26 Precinct to inform them that the Respondent must appear at Lefrak on October 4.

A "couple of days later," Valenti learned that the Respondent had actually signed in on the administrative log next to the firearms desk in the Medical Division and also learned the Respondent had been calling Police Officer Connaghton of the Firearms Removal/Restoration Desk repeatedly to get her paperwork to return to full duty. Connaghton told the Respondent that he would be off on October 4 and wanted her to come a different day, but she insisted on coming that specific day. Connaghton agreed to leave the paperwork at his desk and to allow somebody else to process the paperwork for the Respondent. Valenti was unaware of any notification from Connaghton to the 26 Precinct stating that the Respondent should report to Lefrak on October 4.

Valenti found an entry from the Respondent in the administrative log showing that she signed in at 7:18 a.m. Keenan also informed Valenti that the 26 Precinct showed

that the Respondent should start her tour at Lefrak. Valenti added that he did not know where the Respondent ended her tour that day, but there would be no reason for her to end it at Lefrak.

On cross-examination, Valenti affirmed that he has previously testified “dozens” of times. He agreed that the Respondent was trying to get her paperwork from the firearms restorations desk to expedite the process of returning to full duty and “to become a productive member of the Police Department.” Valenti also agreed that when others told her to wait or come at another time, the Respondent took it upon herself to go on her own and speed up the process of returning to full duty. Valenti explained that the only problem involved the Respondent going to the 15 floor and requesting that her case be reviewed again by the Medical Board, and added that she stopped at the Disabilities Unit to ascertain how fast her case could be sent back and reviewed prior to going to the Firearms Removal/Restoration Desk.

Valenti did not know what was in room 1663, but guessed it may have been the Administrative Offices. He affirmed that he previously stated that the Respondent signed in at 7:20 a.m. Valenti was shown a document (RX B) and he explained that the document was a copy of the sign-in log. He acknowledged that the Respondent actually signed in at 7:05 a.m.

Valenti explained that the 16 floor of the Medical Division held the offices for Absence Control, the Orthopedic Clinic, Candidate Testing, the Chief Surgeon’s Office, the Medical Office, and DOLE Testing. Valenti stated that Connaghton’s desk was located in the Administrative Office on the 16 floor. He agreed that room 1633 could possibly be the Administrative Offices. Valenti stated that he saw the Respondent on the

15 floor at approximately 7:20 a.m., no more than 15 minutes after the Respondent signed in.

Valenti denied greeting the Respondent or making any gestures toward her, although he stated that she saw him and added that he did not question her. Valenti explained he knew who the Respondent was because she frequently comes to Lefrak, specifying that he has never seen any other member of the Department with more authorizations for treatment in a six-year time period. He agreed that the doctors and physicians of the Medical Division did determine that she needed some form of treatment on these occasions, and that all her authorizations were approved. He explained that the doctors of the Medical Division were given the honorary rank of inspector, and again agreed that they approved all of the medical treatment that she received.

Valenti clarified that he called the 26 Precinct to learn why the Respondent was present at Lefrak, but could not recall what exact time he called. Valenti agreed that Connaghton left a package for the Respondent on his desk and also that it was picked up on October 4 after 7:05 a.m. He last saw the Respondent at 7:20 a.m. on the 15 floor. He affirmed that the Respondent was headed toward the elevators at that time.

On re-direct examination, Valenti testified that the Respondent had taken the sergeant's test and that she needed to return to full duty in the near future to be eligible for the promotion. He agreed that being on medical restriction would have prevented the Respondent from becoming a sergeant. Valenti also agreed that once the Respondent picked up her paperwork from the Firearms Removal/Restoration Desk she should have returned to the 26 Precinct Station House. He could not say if she ever actually returned to the station house.

On questioning by the Court, Valenti explained that the document he was referring to (RX B) was an administrative sign-in log of a logbook for the staff and not a roll call. Valenti has been a member of the Department for 23 years.

### The Respondent's Case

The Respondent testified on her own behalf.

### The Respondent

The Respondent is an almost six-year member of the Department who was appointed to the Department on July 1, 2002. After her assignment in the Police Academy, she was sent to the 23 Precinct on the East Side in Manhattan North, which covers East Harlem. She remained at the 23 Precinct for nine months, and then went to the 19 Precinct, also on the East Side. A year and four months later, the Respondent was assigned to the 26 Precinct in West Harlem, where she is still presently assigned. The Respondent is currently on full duty.

The Respondent testified that she was first injured on March 15, 2005 attempting to detain a hijacking suspect. The suspect fought her to the ground, and she went to the hospital immediately afterward. During the incident, the Respondent sustained a label tear to her right rotator cuff, herniated three disks in her neck, and injured her right hand. As a result of these injuries the Respondent was placed on sick leave for approximately seven months. She went to the Medical Division once a month during this time period.

After her sick leave, the Respondent was on limited and restricted duty for approximately one year. She clarified that she had been placed on limited duty for 30

days and then put on restricted duty. The Respondent could not engage in enforcement duties while she recuperated from her injuries. She received "quite a lot" of physical therapy between the time she went out sick and the fall of 2006; and some of her appointments for physical therapy occurred during her assigned tours.

The Respondent testified that her physical therapy appointments were located at 3225 Westchester Avenue in the Bronx, and she stated that she lived in the Bronx at that time. The sessions would vary in length, lasting an hour and a half to two hours. To leave for her appointments, the Respondent would sign off on the TS log and then change out of uniform. She would then go to the desk again so they could put her in the Command Log as being at physical therapy.

The Respondent explained that most of her appointments took place in the afternoon, and so she would request lost time if the appointments ended prior to the end of her scheduled tour. The Respondent stated that she never went back to the station house to request lost time; her requests were always made over the telephone through the desk sergeant.

The Respondent has worked at the 26 Precinct for approximately four years. She spent one of those four years as a TS operator or assistant desk officer while on restricted duty. She testified that she saw other members of the service request lost time over the telephone and explained that it was a common practice at the 26 Precinct.

On September 13, 2006, the Respondent went to a physical therapy appointment but spent approximately 43 minutes doing non-therapy related activities. She testified that she has been to therapy for her injuries over a hundred times. The Respondent



explained she was on a variety of different medications for her injuries and that those medications required her to ingest them with food to prevent her from getting sick.

The Respondent specified that she was only given permission to go to physical therapy and nothing else. She admitted that on certain occasions she would do other things while on her way to physical therapy. The Respondent stated that she would eat on the way so that she could take her medication or she would pick up her medication. These actions were technically outside of the pass that she was given by her supervisors. The Respondent stated that on September 13, the 43 minutes she spent outside of physical therapy were for the purposes she just described.

On September 27, 2006, the Respondent was outside her residence between 12:09 p.m. and 2:20 p.m. when she should have been at physical therapy. Her residence is extremely close to the location where she would go to get physical therapy, located only six or seven blocks away. The Respondent would sometimes go to her residence during the time period when she was given the pass to go physical therapy, clearly outside of the purpose of the pass given to her by her supervisors.

On October 13, 2006, the Respondent spent approximately two hours and five minutes outside of physical therapy without the Department's permission. Prior to leaving for physical therapy, the Respondent would frequently be taken off TS duty and given other administrative tasks to do until she left. At this point the Command Log would be changed to reflect that she was at physical therapy because she was on-duty. On October 13, the Respondent's post was changed to physical therapy in the Command Log.

The Respondent went to see the district surgeon about her injuries on September 22, 2006, in order to determine if she would continue on restricted duty status. Such visits were occasionally done off-duty, but they usually took place while the Respondent was on-duty. The visit on September 22 occurred while the Respondent was on-duty.

Occasionally the Respondent would proceed to physical therapy after her monthly check-up appointments with the district surgeon. Such was the case on September 22, when the Respondent was told to go to physical therapy at 1:50 p.m. However, on that day the Respondent did not arrive at physical therapy until 3:28 p.m., a discrepancy of two hours and thirteen minutes. She could not say what exactly she was doing on that date, as there had been so many therapy appointments, but agreed she did not go immediately to physical therapy.

Also on September 22, Valenti questioned the Respondent in an Official Department Interview. During the interview, she was confronted with a clinic log showing that she left at 1:15 p.m., but she had signed out at 1:45 p.m. The Respondent could not remember the exact time she left the clinic on that day. An investigator's worksheet was entered into evidence as RX C. Using the worksheet, the Respondent stated that she left the clinic at 1:15 p.m. but signed out for 1:45 p.m. She did not know the reason for the discrepancy, stating that she may have made a mistake on the sign-out sheet.

The Respondent currently takes the medications Percocet for pain and Flexeril as an anti-inflammatory medication and muscle relaxant. The Respondent provides the Department with information regarding which medications she currently uses. After

returning to restricted duty, the Respondent suffered a fractured wrist as a result of falling down a flight of stairs in a precinct.

The Respondent was on restricted duty in October 2007. Previous to October but after she had sustained her injuries, the Respondent took the Department's sergeant promotional exam. In the fall of 2007 the Respondent's list number was approaching regarding the possibility of being promoted to sergeant. The Respondent needed to be on full duty to be eligible for the promotion to sergeant.

The Respondent put in for three-quarters disability while she was on restricted duty status, in 2006 or early in 2007. To return to full duty, the Respondent simply needed the district surgeon's approval. The Respondent received permission to return to full duty in October 2007.

In order to return to full duty, the Respondent needed to get a restoration form from the Medical Division to get her firearms back. On October 3, 2007, the Respondent had returned to full duty but had not yet retrieved her firearms. In order to retrieve her firearms and shield, the Respondent was notified prior to her 4:00 p.m. to 12:00 a.m. tour that she would have to complete a day tour, go to One Police Plaza to get a new Department identification (ID) card, and go to the Property Clerk's Division. The Respondent also needed to go to the indoor range at the Police Academy to ensure she could fire her weapon.

The Respondent started her tour that day at 7:00 a.m. as the TS operator. At approximately 8:30 a.m. the Respondent's post was changed to One Police Plaza and she was told to change out of her uniform and get ready to leave. She left the precinct at 8:50 a.m. Between 8:30 a.m. and 8:50 a.m. the Respondent was entering a "61" [arrest report]

as a favor for the Compstat sergeant. The Respondent changed out of her uniform after taking approximately 15 minutes to complete this task.

The Respondent then began traveling downtown in her vehicle. She took West 125 Street heading toward the East Side in an attempt to get on the FDR Drive to go to the Police Academy. The Respondent could see the entranceway to both the southbound FDR Drive and the Triborough Bridge from the right lane of the intersection at West 125 Street and Second Avenue. However, as she began to cross the intersection she noticed an orange construction sign ahead. She stated, “[T]here was construction ahead, 500 feet ahead, and there was a lot of traffic around me in the left lane. People were also turning right to get onto the ramp as well...to the Triborough.” Other traffic was getting onto the Triborough Bridge from her lane, and the Respondent ended up unintentionally getting on the Triborough Bridge even though she wanted to continue straight toward the FDR Drive.

Once on the bridge, the Respondent paid the toll and continued through. Making a U-turn at the toll booth of the Triborough Bridge is prohibited. She decided that she would get off at the very first exit, Queens Boulevard, and then take 21 Avenue to 59 Street to return to Manhattan. Such a route would take approximately 15 minutes until she was back on the 59 Street Bridge, south of the Triborough Bridge.

When the Respondent reached the intersection of 21 Avenue and Queens Plaza North, a police officer approached her Honda Accord and knocked on the window. The Respondent pulled over to the right and rolled down the window to say hello. The police officer was her ex-boyfriend, Leon, assigned to Housing in Police Service Area No. 6. They had a “very brief” conversation, lasting five or ten minutes. During this

conversation, Morales and Andres also pulled up next to the Respondent in their radio motor patrol (RMP) car. Morales waved hello and continued to drive away. The Respondent then continued on her way.

The Respondent reached the Police Academy at 10:00 a.m. She went to the range, signed in, and shot 50 rounds. She passed and received approval to retrieve her firearms. However, she was not aware that she also needed to get a package at the Property Clerk's Division, which included a restoration form at the Medical Division at Lefrak. Neither the doctors nor her Roll Call informed her of the restoration form required to retrieve her firearms.

The Respondent then called Sergeant Beer at the precinct and asked to be post-changed to One Police Plaza to obtain a new full-duty ID card and her firearms. Beer informed her that he made an entry in "the book" and indicated to the Respondent that there was no problem. At this point the Respondent believed her post had been changed from the Police Academy to One Police Plaza.

When the Respondent finished her business at One Police Plaza at approximately 3:00 p.m., she telephoned Young at her precinct and asked for lost time. This request was granted. Additionally, on October 3 the Respondent spoke with Rodriguez about changing her tour to begin at Lefrak. This change was necessary because they refused to return her firearms at One Police Plaza without a restoration form. Rodriguez told the Respondent that she would call Lefrak in order to find out where to get the restoration form.

The Respondent also called Lefrak and spoke to Connaghton about getting her restoration form as well as calling Roll Call again that day. Roll Call spoke to Flood,

who filled out a "49" [memorandum] stating that the Respondent was on full duty in an attempt to expedite the process. Nobody told the Respondent that she could not begin her tour at Lefrak. The Respondent testified that at the end of her tour on October 3, "I was told that I would be doing a day tour the next day at Lefrak."

She arrived at Lefrak at 7:00 a.m. on October 4. She then proceeded to Room 1663 and signed in, picking up the restoration forms from Connaghton's desk. She was only on the 16 floor for "[m]aybe five minutes, ten minutes." She then went to the Article Two Disability Board, stating, "I went down there to drop a form off that was asked of me, that needed to go to one of the male nurses that works for the Department." This form was regarding the application the Respondent put in for a line-of-duty disability.

The Respondent left Lefrak and called Beer at 7:15 a.m. As she was exiting the building she saw Valenti and greeted him. Valenti nodded his head in return and did not have any other contact with the Respondent. The Respondent then went to One Police Plaza where she retrieved her firearms. She returned to full duty the next day.

On cross-examination, the Respondent agreed that she was off post for 43 minutes on September 13, 2006. The Respondent also agreed she was off post for two hours and thirteen minutes on September 22, 2006. She affirmed she made false entries into the Department records at the clinic log, stating she left at 1:45 p.m. when she actually left at 1:15 p.m. The Respondent admitted she was off post for two hours and eleven minutes on September 27, 2006 and off post for two hours and fifteen minutes on October 13, 2006. The Respondent also admitted she had been off post for a total of four hours and five minutes on November 9, 2006. The Respondent conceded she engaged in conduct

prejudicial to the good order, efficiency, and discipline of the Department by making false statements to Officer Fuoco.

The Respondent agreed she left the precinct at 8:50 a.m. on October 3, 2007 and proceeded across town to go to the FDR Drive. The Respondent affirmed she had worked nearly her entire career in the vicinity of Harlem and is relatively familiar with the layout of the area. The Respondent also affirmed that on October 3 she traveled too far which resulted in her getting onto the ramp leading to the Triborough.

The Respondent denied she had any way of turning around once she was on the ramp to the Triborough Bridge; she would have to cross the bridge and then return. The Respondent agreed she took the first exit, although was not sure which exit it was. She believed she ended up on Hoyt Avenue, explaining that the road she was on was "whichever exit goes to 21st Avenue." She affirmed she went locally in order to get to the 59 Street Bridge. She did not travel down the Grand Central and get off at Jewel Avenue to travel to Queens Boulevard, nor did she get off at 108 Street and begin heading toward Manhattan. The Respondent explained she chose a route that would allow her to avoid paying another toll, resulting in her choice of the 59 Street Bridge. She stated that the routes took close to the same amount of time. The Respondent admitted she did not call the precinct and explain that she was having traffic difficulties.

The Respondent clarified that she was stopped at a red light in the vicinity of the 59 Street Bridge when an officer knocked on her window. The Respondent admitted she then recognized the officer and made a conscious decision to pull her car over and speak with him, reiterating that their conversation only lasted about ten minutes. The Respondent conceded that she knew she had someplace to be while she was holding the

conversation. During the conversation, the Respondent explained that Leon asked her about her injuries and about other "job stuff," and agreed that their conversation was "[j]ust casual banter, catching up."

The Respondent learned that she had to go to Lefrak after the Property Clerk's Division told her she needed to pick up a document from there. At this point the Respondent called Rodriguez in Roll Call and explained the situation, and Rodriguez indicated to her that she would have to do a day tour again the next day. Rodriguez did not have the authority to instruct the Respondent to report directly to Lefrak, so she informed the Respondent that she would call Flood. The Respondent admitted she never personally spoke to Flood to get authorization to report to Lefrak the next day. She explained she did speak with Young at 3:00 p.m. when she requested lost time. The Respondent indicated that Young was otherwise occupied on the desk, stating, "[Young] didn't really get into it with me. She was very busy on the desk. I mentioned to her the problem, that I couldn't get the gun, and that I would have to get the restoration form and she said, 'Okay, okay.' I explained to her that I would have to do a day tour. She said, 'Okay, I have to go, I'm very busy on the desk.'"

The Respondent explained Young never listed her as reporting to Lefrak; she specified Roll Call made that change. Roll Call also informed the Respondent she would have to perform a day tour on October 4; the Respondent did not make that decision on her own. The Respondent explained that Rodriguez told her to report directly to Lefrak and stated she would put it on the roll call. She denied anybody from the Medical Division told her to report to Lefrak due to the fact that these events took place late in the day and there would be no time for a paper notification.



The Respondent recalled having a conversation with Connaghton at the Firearms Removal/Restoration Desk, and agreed that Connaghton told her that he would be off-duty on October 4. The Respondent also confirmed that Connaghton told her he would leave the paperwork on his desk and she could pick it up when the office opened at 7:00 a.m. The Respondent admitted that Connaghton never told her she could begin her tour at Lefrak; he merely stated that the paperwork would be there at 7:00 a.m. and made no reference to her tour or where she should report.

The Respondent added that numerous times in the past Roll Call has informed her of a change of post over the telephone and that such a verbal instruction would customarily be considered official notification. The Respondent conceded she did not seek confirmation from an independent supervisor, but added Young said "Okay" and so the Respondent interpreted that she had permission to report to Lefrak.

On re-direct examination, the Respondent testified she was never specifically told not to report to the Medical Division.

On questioning by the Court, the Respondent indicated she initially spoke to Young about the lost time, but then mentioned she would need to go to Lefrak another time to complete the process of retrieving her firearms. The Respondent agreed that she told Young she needed to go to Lefrak the next day, not just at some point in the future. She also agreed that Young's response was, "Okay, okay, I'm busy on the desk." The Respondent explained she got a verbal confirmation from Rodriguez that she had permission to start her tour at Lefrak and during that conversation Rodriguez indicated she had spoken to Flood.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82885/07

Specification No. 1

The Respondent has pleaded Guilty to being off -post without authority or permission for 43 minutes in that on September 13, 2006 she finished her physical therapy at 2:45 pm and went home rather than complete her tour which ended at 3:28 pm. The Respondent explained that following her injury with a hijacker who she physically fought with, she spent 30 days on limited duty and then approximately one year on restricted duty while assigned to the 26 Precinct. She said that with regard to September 13, 2006, there were times when she had to get food to take with her medication and would obtain food either before or after her physical therapy session. She further explained that obtaining food was outside of the scope of her pass for physical therapy.

The Respondent did not offer this Court any concrete mitigation or explanation as to why she failed to complete her tour on September 13, 2006. The notion that she may have needed food to take with her medication did not obviate her responsibility to end her tour at work.

Accordingly, because the Respondent pleaded Guilty to Specification No. 1, I find the Respondent Guilty of Specification No. 1.

Specification Nos. 2 and 3

The Respondent pleaded Guilty to being off-post without permission or authority on September 22, 2006 in that she completed her scheduled appointment with her Department Surgeon at 1:15 pm, but did not arrive at physical therapy until 4:28 pm. The Respondent said that she has had been to physical therapy so many times that she could

not recall exactly what she did on that date to cause her to arrive for physical therapy at 4:30 pm. The Respondent was also charged with making false entries in Department records on that date in that she indicated in the clinic log that she left at 1:45 pm, but in fact, she was observed leaving the clinic at 1:15 pm. Initially the Respondent stated that she could not recall why there was a discrepancy in her sign out time and the time noted in the clinic log. She was shown an investigator's worksheet to refresh her recollection and then she said that she may have made a mistake when signing out. She expressed that she was taking the medications Percocet for pain and Flexeril as an anti-inflammatory and muscle relaxant.

With regard to Specification No. 2, the Respondent offered no explanation as to why it took her three hours and 13 minutes to get to physical therapy after leaving the Department surgeon. With respect to falsely reporting that she left the clinic at 1:45 pm when she was observed leaving at 1:15 pm [as contained in Specification No. 3], she stated that she made a mistake. The Court found this explanation to be contrived for two reasons. One, it took the Respondent over three hours to get to her next appointment. Two, the Respondent began by stating that she could not recall why there would be a discrepancy between the time she wrote in the log and the time she was observed leaving the clinic.

Accordingly, because the Respondent pleaded Guilty to Specification Nos. 2 and 3, I find her Guilty of Specification Nos. 2 and 3.

Specification Nos. 4 and 5

The Respondent has pleaded Guilty to being off-post without permission or authority in that on September 27, 2006, for two hours and 11 minutes, she was observed either inside of her house or car prior to going to physical therapy. The Respondent stated that on that date, she may have stopped at her residence which is outside the scope of the pass she received to attend physical therapy. The Respondent also pleaded Guilty to being off-post without permission or authority on October 13, 2006 in that for approximately two hours and five minutes she was not present for physical therapy when her assignment was changed at 11:05 a.m. to allow her to attend physical therapy. The Respondent explained that although she had been taken off of the TS position and post changed to physical therapy, there were times when she had administrative duties to perform inside the station house prior to leaving for physical therapy.

With regard to Specification No. 4, the fact that the Respondent stopped at her residence is not a mitigating factor or explanation as to why she failed to report to therapy for two hours and 11 minutes. Regarding Specification No. 5, the fact that the Respondent performed administrative duties at times, without testifying as to how long it took for her to perform those duties is not a justification as to why she failed to report to therapy for two hours and five minutes on October 13, 2006.

Accordingly, because the Respondent pleaded Guilty to Specification Nos. 4 and 5, I find her Guilty of Specification Nos. 4 and 5.

Specification Nos. 6 and 7

The Respondent pleaded Guilty to being off- post for four hours and five minutes. The Respondent admitted that she was off-post for one hour from 7:05 am to 8:05 am because her tour started at 7:05 am, but she failed to report to the Department doctor until 8:05 am. The Respondent admitted that she was off-post for one hour and 20 minutes because she signed out of her doctor's office at 10:40 am, only to return at 11:50 am and change her departure time from the doctor's office to 12:00 pm. The Respondent also admitted that she was off post for one hour and 45 minutes because she signed out at the doctor's office a second time at 12:00 pm, but did not arrive at her command until 1:45pm. The Respondent offered no explanation as to why she was off post for a total of four hours and five minutes.

In Specification No. 7, the Respondent also pleaded Guilty to engaging in conduct prejudicial to the good order, efficiency and discipline of the Department in that she made false and misleading statements to Sergeant Fuoco, the 26 Precinct desk officer. The Respondent admitted that she spoke to Fuoco at 12:40 pm and requested lost time stating that her doctor arrived late and her appointment did not end until 12:30 pm when, in fact, this representation was false. Again, the Respondent offered no explanation as to why she engaged in this conduct.

Accordingly, because the Respondent pleaded Guilty to Specification Nos. 6 and 7, she is found Guilty of Specification Nos. 6 and 7.

Disciplinary Case No. 83504/07  
Specification No. 1

The Respondent stands charged with failing to proceed to her post as directed by a supervisor and being off-post for approximately one hour and ten minutes on October 3, 2007. It is alleged that the Respondent was post changed to the Police Academy in New York County, but she was observed in the vicinity of the 59 Street Bridge in Queens County. The Respondent is found Guilty as charged. Evidence adduced at trial established that on October 3, 2007, the Respondent was initially assigned to the 26 Precinct located at West 126 Street in Manhattan. The Respondent was subsequently post changed to the Police Academy located at East 20 Street in Manhattan. Sergeant Lourdes Morales who was working a fixed post in a Department car located in the vicinity of 21 Street and Queens Plaza North testified that she observed the Respondent near her post. She stated that the Respondent pulled up in her vehicle and was talking to one of Morales's subordinates, a Police Officer Leon. Morales said that she knew the Respondent was dating Leon. According to Morales, Leon and the Respondent spoke for about ten minutes before the Respondent left.

The Respondent testified before this Court that she chose to take the FDR Drive to get to the Police Academy on that day. But when she arrived in the vicinity of the entrance, she ended up on the ramp to the Triborough Bridge. She explained that she could not back off of the Triborough Bridge and then took the first exit off. She acknowledged that she drove locally and ended up near the 59 Street Bridge where she encountered a police officer she knew who tapped on her window and whom she engaged in conversation for approximately ten minutes. I found this testimony of the Respondent to be incredible. The Respondent admitted during cross-examination that she spent her

entire career working in Harlem. It is inconceivable that she would be unable to follow the signs to the FDR Drive in a familiar location and instead end up at the entrance to the Triborough Bridge to a location where coincidentally her boyfriend was working a steady post. In addition, testimony at trial established that the station house was closer to the West Side Highway than the FDR Drive. It is unclear why the Respondent would take the FDR Drive if the West Side Highway were conveniently located unless it was to meet Leon.

Keenan testified that the Respondent left the station house at approximately 8:30 am, but did not arrive at the Police Academy until 10:00 am. The Respondent made no attempt to notify either her command or the Police Academy that she was having traveling problems. I find that the Respondent failed to proceed to her post at the Police Academy as directed.

Accordingly, I find the Respondent Guilty of Specification No. 1.

Specification No. 2

The Respondent stands charged with changing her post and assignment without permission and authority. She is charged with starting her tour at the Medical Division instead of reporting to the 26 Precinct Station House as required. I find the Respondent Guilty as charged. Evidence adduced at trial through the testimony of Lieutenant Michael Keenan established that he conducted an investigation and found that the Respondent went to Roll Call, spoke with a Police Officer Rodriguez and advised the officer that she had to go to Lefrak [the Medical Division]. Rodriguez made the change to the roll call. Keenan testified that he spoke to supervisors in the command and none of

them authorized the change to the roll call changing the Respondent's assignment from the stationhouse to the Medical Division.

The Respondent testified that she spoke to the desk officer Young and advised her that she needed to go to the Medical Division. The Respondent also said that Rodriguez told her she would have the day tour and that she [Rodriguez] would speak to supervisor Flood. The problem with the Respondent's rationale is that the Respondent acknowledged that Young was busy at the desk and may not have fully understood the conversation. Also, Rodriguez was not in a position to approve any change in the roll call or under any obligation to get approval from anyone else to change the roll call. The fact that the Respondent needed to go to the Medical Division to get her firearms restored to be considered for a promotion did not justify her going to Roll Call and changing her assignment on her own accord. After all, the Respondent was on restricted duty at the time she took the Department's sergeant promotional examination. She needed the District surgeon's approval to return to full duty. I find the Respondent's explanation and action to be lacking in merit.

Accordingly, I find the Respondent Guilty of Specification No. 2.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Police Department on July 1, 2002. Information from her personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.



The Respondent pleaded Guilty and was found Guilty of being off-post on five occasions totaling 11 hours and 17 minutes in an almost one-year period. In one instance, she was off post for four hours when she signed in and out at the Department doctor's office twice in one day and failed to return to her command until late in the afternoon. The Respondent was also found Guilty of failing to proceed to her post as required for one hour and ten minutes and was observed on that occasion in Queens County when her post change was from the 26 Precinct in New York County to the Police Academy in New York County. In addition, the Respondent was found Guilty of making false and misleading statements to a Sergeant about her doctor's appointment, making a false entry in a Department record by indicating in the clinic log that she left at 1:45 pm when she was observed leaving the clinic at 1:15 pm. Moreover, the Respondent was also found Guilty of changing her post and assignment without permission or authority to do so.

The Department asked for a penalty of 45 vacation days and one-year dismissal probation. The Court agrees. The Respondent's conduct lacks candor, and is repetitive in the sense that she has been found Guilty in two disciplinary cases for essentially the same misconduct of being off-post on several occasions. This conduct is unbecoming of a member of the service in a paramilitary organization such as the Police Department, particularly a member who has only been with the Department for five years. But most of all, the Respondent's misconduct demonstrates that she is in need of monitoring to ensure that this type of conduct will not be repeated. This tribunal has held that a period of dismissal probation "gives the Respondent the benefit of another chance to show that [s]he can be an asset to this Department while affording the agency the prerogative of

ending [her] employment if [s]he does not.” (See Disciplinary Case Nos. 75596/00 and 75441/00).

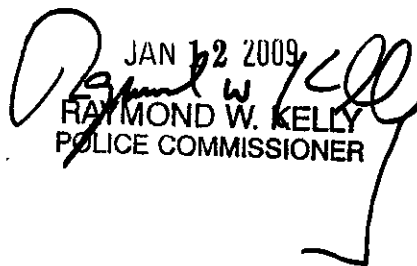
Accordingly, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time she remains on the force at the Police Commissioner’s discretion and may be terminated at any time without further proceedings. I further recommend that the Respondent forfeit 45 vacation days.

Respectfully submitted,

  
Claudia Daniels-DePeyster

Assistant Deputy Commissioner-Trials

**APPROVED**

  
JAN 12 2009  
RAYMOND W. KELLY  
POLICE COMMISSIONER